

**IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF ALABAMA  
SOUTHERN DIVISION**

DAVID C. SPENCER,

Plaintiff,

v.

FRANKLIN AMERICAN HOME  
MORTGAGE and CITIZENS BANK,  
N.A. D/B/A CITIZENS ONE HOME  
LOANS,

Defendants.

Case No. 2:20-cv-02019-SGC

**DEFENDANTS' RESPONSE IN OPPOSITION TO PLAINTIFF'S  
MOTION TO REMAND**

COME NOW, Citizens Bank, N.A. d/b/a Citizens One Home Loans ("Citizens") and FAMC Subsidiary Company<sup>1</sup> ("FAMC" and together with Citizens, the "Defendants"), and file this Response in Opposition to the Plaintiff's Motion to Remand [Doc. 6], respectfully showing this Honorable Court as follows:

**RELEVANT FACTS AND PROCEDURAL HISTORY**

On December 16, 2020, Citizens (with FAMC's consent) removed this case from the Circuit Court of Jefferson County based on federal question jurisdiction. [Doc. 1]. As the Notice of Removal set forth:

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<sup>1</sup> The Plaintiff incorrectly names FAMC as Franklin American Home Mortgage. FAMC was formerly known as Franklin American Mortgage Company but changed its name in 2018.

6. This Court possesses federal question jurisdiction over this action pursuant to 28 U.S.C. § 1331 because the Complaint raises issues and claims under the laws of the United States. Specifically, the Plaintiff alleges a claim arising under the (1) Consumer Credit Protection Act 15 U.S.C. §§ 1681 et seq, see Compl. at ¶¶ 43-46; and (2) Fair Credit Reporting Act, 15 U.S.C. §§ 1601 et seq, see Compl. at ¶ 52.

[Doc. 1] at pp. 2-3, ¶ 6.

The Notice of Removal then showed that this Court possesses supplemental jurisdiction over the remaining state law claims. *Id.* at ¶¶ 7-8.

On January 4, 2021, the Plaintiff filed a Motion to Remand. [Doc. 6]. The Motion to Remand completely ignores the federal claims in the Complaint and declared that “all of the Plaintiff’s claims are based on state law.” *Id.* at p. 6, ¶ 17. That is not so, and the Motion to Remand must be denied.

### **ARGUMENT AND CITATION OF AUTHORITY**

The Plaintiff seems not to know his own Complaint. Paragraph 11 of the Motion to Remand incorrectly states that the Complaint sets forth seven counts, all under state law. *Id.* at p. 4, ¶ 11. He also says that, of those seven counts, Count VII is for intentional infliction of emotional distress. *Id.* That is not true. The Complaint sets forth nine counts and Count VII is not for IIED. Instead, it is explicitly brought under federal law and is titled “Consumer Credit Protection Act.” *See* [Doc. 1-1] at pp. 11-12. Paragraph 45, within that count, states that “[t]he Defendants’, Franklin American and Citizens, representatives’ actions were in

violation of federal law including but not limited to the Consumer Credit Protection Act 15 U.S. §1601-1693.” *Id.* at p. 12, ¶ 45. The next paragraph then says that the Defendants’ actions in violating federal law “proximately caused the Plaintiff to suffer injuries and damages” and then goes on to pray for a judgment of damages not to exceed \$75,000.00. *Id.* at ¶ 46. Count IX, for injunctive relief, states that the Plaintiff is entitled to relief for violations of “the federal Fair Credit Reporting Act (‘FCRA’), 15 U.S.C. § 1681 *et seq.*” *Id.* at p. 13, ¶ 52.

There is no doubt that the Plaintiff has set forth claims that arise under federal law and “[t]he district courts shall have original jurisdiction of all civil actions arising under the . . . laws . . . of the United States.” 28 U.S.C. § 1331. The Motion to Remand must be denied.

### **CONCLUSION**

Based on the foregoing, the Defendants respectfully request that this Court deny the Plaintiff’s Motion to Remand.

Respectfully submitted, this 5th day of January 2021.

*/s/ Amanda M. Beckett*  
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**CERTIFICATE OF SERVICE**

I hereby certify that I have, this 5th day of January 2021, filed the within and foregoing by CM/ECF, which will serve notice on all parties.

/s/ Amanda M. Beckett

AMANDA M. BECKETT

Alabama Bar No. ASB-1884-N75B